

REMARKS

Claim 1-20 are in the application after amendment herein. In the Office Action mailed 29 August 2008 the application was removed from appeal and new rejections were presented under Section 112 and Section 103. Applicants respectfully disagree in part with the new rejections presented under Section 112. This application has been examined multiple times prior to being appealed and with the exception of a specific remark directed at claim 1, the rejection under Section 112 as now presented does not appear supportable. As for the single specific remark that, in claim 1 it is unclear what "end" is referring to, the claim is amended to more clearly indicate that

"the first phase is characterized by an end time based on a defined receive time of the end of a data telegram having the first priority at one of the second users. "

As for the contention that the term "data telegram" might not satisfy the requirements of Section 112, applicants disagree and request that the Examiner review paragraph [004] in the published application, i.e., the first paragraph in the section titled BACKGROUND OF THE INVENTION which explains to the reader that data telegrams are data packets.

All of the examined claims are newly rejected under Section 103 based on Shaffer (U.S. 5,960,001) in view of Lee (U.S. 6,611,886). However, applicants understand this rejection to be substantially the same as the former rejection based on Shaffer under Section 102, except that the Examiner has lumped the rejection of the independent claims 1, 6 and 10 together as though they recite identical subject matter. To sustain a rejection, all of the features of each claim must be found in the prior art. It does not appear that this burden was carried.

For example, with respect to at least claim 1, the Shaffer reference is again incorrectly relied upon based on the same disclosure which forced the applicants to appeal the final rejection. This is apparent from the stated use of the Lee reference as only relied upon for teaching that multiple packets may be sent in a single phase. See page 4 of the office action.

Applicants have already invested heavily in an appeal which the Examiner has withdrawn, only to again apply the same defective argument based on Shaffer - but this time under the format of a new rejection. Technically it may be a new rejection, but it is inconsistent with the very reason the Examiner withdrew the application from appeal. See, for example, paragraph 4 at page 2 of the office action which refers to page 10 (last paragraph) of the appeal

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brief as the basis for withdrawing the application from appeal. The last paragraph at page 10 of the appeal brief identifies deficiencies in the Shaffer reference which the Examiner has not corrected under the new rejection.

Applicants again respectfully disagree with the Examiner's application of the Shaffer reference. It has been urged multiple times that none of the Examiner's citations from the Shaffer reference relate to defining a phase in a transmission cycle based on a receive time of the end of a telegram or data packet. Thus, all of the independent claims appear to be again rejected by incorrectly relying upon Shaffer, as fully addressed in the appeal brief. That is, the primary reference (Shaffer) is deficient for the very same reasons argued in the appeal brief and the Lee reference does not at all compensate for such.

Nor does the Examiner even argue that the Lee reference is relied upon for anything but for teaching that multiple packets may be sent in a single phase. In view of the blatant deficiencies in the new rejection the Examiner is requested to withdraw the rejection and allow the claims. Discussion of the Examiner's application of the Lee reference to reject the dependent claims is not necessary in view of the repeated errors in rejecting claims 1, 6 and 10.

Claim 4 is amended and claims 19-20 are added to more clearly and fully define patentable subject matter. All claims are distinguished over the Examiner's new combination based on the same deficiencies identified in the Shaffer reference in the appeal brief.

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Conclusion

Based on the above amendments and the argument presented, the application should be allowed. The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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